



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

JED SHAY MD  
2411 FOUNTAIN VIEW SUITE 222  
HOUSTON TX 77057

#### **Respondent Name**

LIBERTY MUTUAL INSURANCE COMPANY

#### **Carrier's Austin Representative Box**

Box Number 1

#### **MFDR Tracking Number**

M4-05-0456-01

#### **MFDR Date Received**

September 14, 2004

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** The requestor did not submit a position statement for consideration in this review.

**Amount in Dispute:** \$6,175.00

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Services provided by the entity 'St Thomas Surgical Center' were denied because it is not listed by the Texas Department of Health as a Licensed Ambulatory Surgery Center."

**Response Submitted by:** Liberty Mutual, 2875 Browns Bridge Road, Gainesville, Georgia 30504

### **SUMMARY OF FINDINGS**

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
November 18, 2003	Ambulatory Surgical Services	\$6,175.00	\$0.00

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1 sets forth general provisions related to use of the fee guidelines.
3. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
4. This request for medical fee dispute resolution was received by the Division on September 14, 2004. Pursuant to 28 Texas Administrative Code §133.307(g)(3), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on September 20, 2004 to send additional documentation relevant to the fee dispute as set forth in the rule.
5. Neither party to this dispute submitted copies of any explanations of benefits for review.

## **Findings**

1. The payment exception codes used to deny the disputed services were unavailable for review. 28 Texas Administrative Code §133.307(e)(3)(B) requires that upon receipt of the request, the respondent shall provide any missing information required on the form, including absent EOBs not submitted by the requestor with the request. Review of the documentation submitted by the respondent finds no copies of any missing explanation of benefits or explanation of the payment exception codes used to deny the disputed services. The Division concludes that the respondent failed to meet the requirements of §133.307(e)(3)(B).
2. The respondent asserts that "Services provided by the entity 'St Thomas Surgical Center' were denied because it is not listed by the Texas Department of Health as a Licensed Ambulatory Surgery Center." The insurance carrier did not present any explanations of benefits for review. Per 28 Texas Administrative Code §134.801(e)(4), effective July 15, 2000, 25 *Texas Register* 2139, the health care provider that provided the treatment(s) and/or service(s) shall submit its own bill, unless "the treatment(s) and/or service(s) was provided by a nonlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill." Review of the records kept by the Texas Department of State Health Services finds no information to support that St. Thomas Surgical Center was a licensed ambulatory surgical center on the disputed date of service. However, review of the submitted medical bill finds that the bill was submitted in the name of Pete Nguyen, M.D., PA. The operative report supports that the Dr. Nguyen was the performing surgeon and supervised the facility services. By preponderance of the submitted evidence, the Division concludes that the health care provider met the billing requirements of §134.801(e). The insurance carrier's denial reasons are not supported. These services will therefore be reviewed for payment according to applicable Division rules and fee guidelines.
3. This dispute relates to facility services attendant to ambulatory surgery with reimbursement subject to the provisions of former 28 Texas Administrative Code §134.1(c), effective May 16, 2002, 27 *Texas Register* 4047, which requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."
4. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
5. Former 28 Texas Administrative Code §133.307(e)(2)(B), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires that the request shall include "a copy of each explanation of benefits (EOB) . . . relevant to the fee dispute or, if no EOB was received, convincing evidence of carrier receipt of the provider request for an EOB." Review of the submitted documentation finds that the request does not include a copy of the EOB detailing the carrier response to the provider's initial bill. Neither has the requestor submitted convincing evidence of carrier receipt of the provider request for an EOB. The Division concludes that the requestor has not met the requirements of §133.307(e)(2)(B).
6. Former 28 Texas Administrative Code §133.307(e)(2)(C), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires that the request shall include "a table listing the specific disputed health care and charges in the form, format and manner prescribed by the commission." Review of the Table of Disputed Services finds that the requestor has not completed the column indicating the requestor's rationale for increased reimbursement. The Division concludes that the requestor has failed to complete the required sections of the request in the form, format and manner prescribed under §133.307(e)(2)(C).
7. Former 28 Texas Administrative Code §133.307(g)(3)(B), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send "a copy of any pertinent medical records." Review of the submitted documentation finds that the requestor has not provided copies of sufficient medical records to support the services in dispute. Although the requestor did submit a copy of the operative report, the requestor did not submit a copy of the anesthesia record, post-operative care record, or other pertinent medical records sufficient to support the services in dispute. The Division concludes that the requestor has not met the requirements of §133.307(g)(3)(B).
8. Former 28 Texas Administrative Code §133.307(g)(3)(C)(ii), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send a statement of the disputed issue(s) that shall include "the requestor's reasoning for why the disputed fees should be paid." Review of the submitted documentation finds no explanation of the requestor's reasoning for why the disputed fees should be paid. The Division concludes that the requestor has not met the requirements of §133.307(g)(3)(C)(ii).
9. Former 28 Texas Administrative Code §133.307(g)(3)(C)(iii), effective January 1, 2003, 27 *Texas Register*

12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send a statement of the disputed issue(s) that shall include "how the Texas Labor Code and commission rules, and fee guidelines, impact the disputed fee issues." Review of the submitted documentation finds that the requestor did not discuss how the Texas Labor Code and Division rules impact the disputed fee issues. The Division concludes that the requestor has not met the requirements of §133.307(g)(3)(C)(iii).

10. Former 28 Texas Administrative Code §133.307(g)(3)(C)(iv), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send a statement of the disputed issue(s) that shall include "how the submitted documentation supports the requestor position for each disputed fee issue." Review of the requestor's documentation finds that the requestor has not discussed how the submitted documentation supports the requestor position for each disputed fee issue. The Division concludes that the requestor has not met the requirements of §133.307(g)(3)(C)(iv).
11. Former 28 Texas Administrative Code §133.307(g)(3)(D), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that:
  - The requestor did not submit a position statement for consideration in this dispute.
  - The requestor has not articulated a methodology under which fair and reasonable reimbursement should be calculated.
  - The Division has previously found, as stated in the adoption preamble to the former *Acute Care Inpatient Hospital Fee Guideline*, that "hospital charges are not a valid indicator of a hospital's costs of providing services nor of what is being paid by other payors" (22 *Texas Register* 6271). The Division further considered alternative methods of reimbursement that use hospital charges as their basis; such methods were rejected because they "allow the hospitals to affect their reimbursement by inflating their charges" (22 *Texas Register* 6268-6269). Therefore, the use of a hospital's "usual and customary" charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
  - The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
  - The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the submitted documentation finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

### **Authorized Signature**

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Signature	Grayson Richardson Medical Fee Dispute Resolution Officer	August 9, 2013 Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**